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Letter dated 1 June 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Luxembourg submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 31 May 2006 from the Permanent Representative of Luxembourg to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

With reference to your letter dated 24 February 2006 concerning the fifth report of Luxembourg to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001), I have the honour to forward the information requested on the implementation of resolutions 1373 (2001) and 1624 (2005) (see enclosure).

(*Signed*) Jean-Marc **Hoscheit**
Ambassador
Permanent Representative

Enclosure*

[Original: French]

Implementation of Security Council resolutions 1373 (2001) and 1624 (2005)

Fifth report of Luxembourg

Additional information

1. Implementation of resolution 1373 (2001)

1.1

Draft law No. 5165 on money-laundering and terrorist financing later became the Act of 12 November 2004 published in National Gazette A No. 183 of 19 November 2004.

The preliminary draft law on cybercrime that would inter alia approve the Council of Europe Convention on Cybercrime of 23 November 2001 is still being drafted.

In addition, since 2001, Luxembourg has enacted the following laws aimed directly or indirectly at combating terrorism:

1. Act of 12 August 2003 introducing the offences of terrorism and the financing of terrorism into the Penal Code;

2. Act of 19 December 2003 approving the International Convention for the Suppression of Terrorist Bombing, adopted by the United Nations General Assembly on 15 December 1997;

3. Act of 15 June 2004 on the organization of the State Intelligence Service;

4. Act of 15 June 2004 on classification and security clearance;

5. Act of 12 November 2004 on combating money-laundering and the financing of terrorism;

6. Act of 21 December 2004 adopting the Protocol amending the European Convention for the Suppression of Terrorism, done at Strasbourg on 15 May 2003;[1]

7. Act of 6 March 2006 approving the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973;[2]

8. Act of 21 March 2006 on joint investigative teams;[3]

9. Act of 27 March 2006 approving the three Protocols amending the Europol Convention.[4]

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* Annexes are on file with the Secretariat and are available for consultation.

[1] Act published in National Gazette A No. 215 of 31 December 2004.

[2] Act published in National Gazette A No. 50 of 16 March 2006.

[3] Act published in National Gazette A No. 57 of 31 March 2006.

[4] Act published in National Gazette A No. 60 of 5 April 2006.

1.2

The above-mentioned draft law has since become the Act of 12 November 2004 on money-laundering and the financing of terrorism which incorporates Directive 2001/97/EC into national law.

1.3

As regards the freezing of terrorist assets, the Financial Intelligence Unit (FIU-LUX) has not frozen any such assets since the submission of its most recent report to the CTC under the relevant legislation.

The following figures are provided as an illustration of the number of times assets were frozen following a suspicious transaction report (STS): 2001: 19; 2002: 21; 2003: 48; and 2004: 95.

1.4

In Luxembourg, the organizations referred to in the questionnaire as "charities" are governed by the Act of 21 April 1928, as amended, on non-profit associations and foundations, the Act of 6 January 1996 on development cooperation, the Act of 19 December 2002 and the Grand Ducal Regulation of 23 January 2003 on the trade and company register (RCS).

All non-profit associations and foundations shall be registered with RCS. Under article 27 of the above-mentioned Act of 21 April 1928, the articles of association of any foundation must be approved by a Grand Ducal decision.

Any grant, such as gifts, donations or bequests, to a non-profit association (art. 16 of the 1928 Act) or a foundation (art. 36) of more than 12,500 euros must be authorized by Grand Ducal decision. In that regard, it should be noted that anonymous donations are invariably rejected, as confirmed by the administrative courts (see for example the decision of the administrative tribunal of 18 October 2000, case No. 11438, and upheld on appeal by the decision of 15 March 2001, case No. 12515C).

Under the above-mentioned Act of 21 April 1928, as amended, foundations shall also submit their annual accounts to the Ministry of Justice every year (art. 34).

Under article 18 of the Act of 21 April 1928, the Public Prosecutor may seek the dissolution of an association, especially where such association uses its assets for purposes other than those for which its was established, or in violation of the law or law and order.

The Act of 6 January 1996 on development cooperation provides that non-profit associations and foundations that work with the State authorities in the area of development cooperation must be approved by the ministry responsible for development cooperation.

Since the financial transactions of associations and foundations can be processed only by banking establishments incorporated in the Grand Duchy of Luxembourg, such transactions fall under the same regime as all other financial transactions, including the provisions on the financing of terrorism under the Act of 12 November 2004 on money-laundering and the financing of terrorism.

Furthermore, an amendment or a reform of the aforementioned Act of 21 April 1928, as amended, is under discussion; the oversight of non-profit associations and foundations is also being reviewed in the process.

1.5

The preliminary bill on the liability of legal persons is still under preparation.

1.6

The progress report of the Financial Intelligence Unit (CRF-FIU of Luxembourg) for 2003 and 2004 provides statistics on suspicious transaction reports (STRs).

As of 2001, such statistics on STRs may be broken down as follows: 2001: 413; 2002: 631; 2003: 828; 2004: 943 and 2005: 831.

As regards the breakdown of suspicious transaction reports by underlying offences, it should be noted that the financing of terrorism is not a separate offence but it rather falls within the broad category of criminal offences in connection with organized crime and, therefore, the financing of terrorism.

Thus, it should be noted that, according to the aforementioned progress report shows that for 2003, 46 per cent of STRs were connected with an underlying criminal offence falling within that broad category; the corresponding figure for 2004 was 21 per cent.

The above-mentioned 2003-2004 progress report shows, with regard to the number of STRs relating to persons or funds originating from abroad, that for 2003, only 24 per cent of STRs involved Luxembourg residents; the figure for 2004 was 16 per cent.

With respect to prosecutions in connection with STRs filed, there are no statistics on the relationship between the number of STRs filed and the resulting prosecution.

However, during the period 2003-2004, there was a significant increase in the number of criminal cases brought for money-laundering in Luxembourg none of which was related to the financing of terrorism.

1.7

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973, was approved through the above-mentioned Act of 6 March 2006.

1.8

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973, was approved by the Act of 6 March 2006.

Discussion is ongoing among the relevant agencies with a view to the possible accession of Luxembourg to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation concluded at Rome on 10 March 1988 and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, concluded at Rome on 10 March 1988.

A draft bill on the International Convention for the Suppression of Acts of Nuclear Terrorism of 14 September 2005 is under preparation for submission to the Chamber of Deputies.

1.9

A copy of the report submitted by Luxembourg on 3 April 2006 to the European Union as part of a review and assessment of national counter-terrorism mechanisms is annexed hereto.

2. Implementation of resolution 1624 (2005)

2.1

At present, Luxembourg criminal law does not include specific criminal offences for actions and behaviours that could be considered "incitement to terrorism".

Nevertheless, acts of this type are still punishable under general criminal law in Luxembourg, more specifically in implementation of the provisions concerning perpetrators and accomplices to criminal offences (articles 66 to 69 of the Penal Code).

Under article 66 of the Penal Code, anyone who, by means of gifts, promises, threats, abuse of authority or power, conspiracy or criminal deception, has directly provoked the commission of a crime or an offence is considered a perpetrator or accomplice to a crime, as well as anyone who, either by statements made in public meetings or places, by posters displayed or by written material, whether printed or not, and sold or distributed, has directly provoked its commission.

Under article 67 of the Penal Code, anyone who has given instructions for the commission of a crime or an offence or who has procured weapons, tools or any other means which have been used in the crime or offence in full knowledge that they would be put to that use, as well as anyone who knowingly aided or abetted the perpetrator or perpetrators of the crime or offence in its preparation or facilitation or in its accomplishment, is considered to be an accomplice.

A draft law is currently being prepared by the Ministry of Justice, in view of the adoption of the Council of Europe Convention on the Prevention of Terrorism, signed in Warsaw on 16 May 2005.

Given that article 5 of this Convention requires States parties to introduce the offence of "public provocation to commit a terrorist offence" in their domestic law, the question of incitement to terrorism, as it currently exists in the positive law of Luxembourg, will be reconsidered as part of that effort.

2.2

Any individual, whether of Luxembourg or other nationality, may be prosecuted in Luxembourg for acts of incitement to terrorism, in accordance with the laws described in more detail in point 2.1 above.

The laws regarding reciprocal judicial assistance, as more fully discussed in preceding reports, also apply to terrorism offences and allow full and complete cooperation of the law enforcement authorities in Luxembourg with their foreign counterparts.

With regard to individuals having committed or suspected of committing terrorist offences who might attempt to abuse political refugee status in Luxembourg, requests for asylum in Luxembourg are considered in accordance with the Convention on the Status of Refugees signed in Geneva on 28 July 1951, as well as the Act of 5 May 2006 on the right of asylum and supplementary forms of protection.

In implementation of articles 34 and 36 of that Act, refugee status may be denied or withdrawn in particular when the individual in question has committed a breach of the peace, a war crime, a crime against humanity or any other serious crime in common law. These provisions also apply if the individual is the instigator of these acts or has participated in them in some other way.

In addition, acts that could be considered grounds for extradition are in principle also likely to justify denial or withdrawal of political refugee status on the basis of article 1 (f) of the Geneva Convention, so that no legal contradiction exists between the right of asylum and extradition.

As for the correlation between the rights of asylum and extradition and the claim of political grounds which the applicant could invoke to obtain political refugee status in order to avoid extradition, it should be specified that extradition of a political refugee to a third country is not prohibited by the Geneva Convention of 1951.

However, as the very definition of "terrorist act" can differ significantly from one State to another as a function of its socio-political concepts, Luxembourg conducts a concrete and detailed examination of the particular circumstances of each case, taking into account on a case-by-case basis specific problems relating to the origin of the applicant and the requirements of combating terrorism.

Luxembourg approved, by the Act of 21 December 2004, the Protocol of 15 May 2003 amending the European Convention on the Suppression of Terrorism signed in Strasbourg on 27 January 1977, without making use of the facility offered in article 16 of the new version of the Convention, which allows a State party, by means of a reservation, to refuse extradition for an offence it considers to be a political offence.

In any hypothetical case not covered by the preceding paragraph, for instance requests for extradition addressed to Luxembourg by a State that is not a member of the Council of Europe, in application of article 7.4 of the Code of Criminal Investigation, anyone having committed a terrorist offence abroad may be prosecuted and sentenced in Luxembourg when a request for extradition is made and the individual in question is not extradited.

2.3

First of all, the question of security of international borders is particular in the sense that Luxembourg has only one "external" border in the meaning of the Convention implementing the Schengen Agreements of 19 June 1990: the Luxembourg airport. Thus, in general, all measures taken at the level of the European Union to strengthen border security under the Schengen provisions are implemented in Luxembourg.

The monitoring of persons and the security of the airport as a whole are provided by a special service of the Grand-Ducal Police, the Airport Security

Service (SCA), in cooperation with the Customs and Excise Administration. The SCA, like all other units of the Grand-Ducal Police, is connected to the information network managed by the Information Office of the Grand-Ducal Police. Moreover, the SCA works in close collaboration with the immigration section of the Judicial Police Service, with which it participates in the mixed investigation group on counter-terrorism.

Furthermore, the exchange of information between the Grand-Ducal Police, the Customs and Excise Administration and the State Information Service is covered and managed in accordance with article 3 of the Act of 15 June 2004 on the organization of the State Information Service.

Finally, it can be confirmed that the exchange of information relating to border security will be further improved after the entry into force of the draft laws and Grand-Ducal regulations converting into Luxembourg domestic law Council Directive 2004/82/CE of 29 April 2004 concerning the requirement for transport companies to provide information regarding passengers; they were adopted by the Government Council on 10 March 2006.

In the terms of this bill, the service designated to receive the information to be supplied by the airlines is still the SCA, and the text allows the information transmitted to be used for purposes of repression if passengers are subject to criminal prosecution.

2.4

Luxembourg participates actively in work at the level of the European Union aimed at adopting a common and non-emotional lexicon and a strategy for communication with the media in implementation of the strategy against radicalism and terrorist recruitment.

Luxembourg also supports through voluntary contributions the work of such organizations or initiatives as the Euro-Mediterranean Foundation for Dialogue among Cultures (called the Anna Lindh Foundation), the Alliance of Civilizations launched by the United Nations Secretary-General, with the aim of strengthening understanding among different cultures and religions and encouraging open and constructive relationships, and the "Madrid Club" seeking to promote democracy human rights and the rule of law throughout the world, an initiative arising from the attacks of 11 September 2001.

2.5

The legislature has devoted a special chapter in the Penal Code to racism, revisionism and other forms of discrimination.

Article 454 of the Penal Code defines discrimination and lists the various types, including racial discrimination.

Article 455 of the Penal Code targets punishable acts of the types of discrimination contained in article 454 of the Penal Code, especially regarding the provision or enjoyment of property, provision of a service or hiring, to name just a few.

It is a fact that criminal prohibition by itself does not resolve the problem of racism, xenophobia or all other forms of discrimination. Although legislation in Luxembourg in the area of combating racism and revisionism is considered

advanced, a comprehensive and homogenous structural policy against racism and xenophobia in the social, cultural and educational fields must be stressed. That alone can help to prevent and reduce the causes of the emergence of racism and xenophobia, especially since Luxembourg is the European Union country with the highest percentage of non-nationals living or working there.

Article 457-1 of the Penal Code prohibits all forms of incitement to hatred or to racial violence, whether in the form of speech or writing or any other means of audio-visual communication.

It also prohibits the manufacturer, possession, transport and dissemination in Luxembourg or abroad of materials that are likely to incite hatred or racial violence towards a natural or legal person, group or community.

Freedom of association is guaranteed by the Constitution of the Grand Duchy of Luxembourg in its article 26. The right to freedom of thought, conscience and religion is guaranteed under article 19.

Various projects to promote multiculturalism in Luxembourg's schools are addressed to children of different ages, reflecting the cultural diversity that is part of the daily life of children and young people. In order to facilitate the schooling of children of asylum-seekers and refugees, the Ministry of Education has hired intercultural mediators coming from the countries of origin of the applicants for asylum, who speak Serbo-Croatian, Albanian and Russian. They provide a link between their community and the Luxembourg community on questions regarding integration of children in the schools and activities related to schooling. Interested schools and communes may call on their services free of charge.

A reading committee is responsible for review of school textbooks with the goal of introducing material on human rights and to verify that their content respects such rights. Human rights education is promoted across disciplines.

The cultural policy conducted by the Government is largely based on the policy defined by UNESCO in 1982: naturally, it includes art in all its forms, but also an attitude of respect towards the values of the other. The practice of culture open to all thus becomes a bastion against all types of fanaticism and a guarantee of the democratic values of our multicultural society. Currently, it is commonly accepted that the principle of equality must be observed in each cultural sector and institution.

It follows that the Ministry of Culture endeavours to do its utmost to guarantee access for all to culture. No distinction is made with regard to support measures: cultural institutions are open to all. Each year the Ministry of Culture provides support to numerous activities and cultural events by means of subsidies, which are awarded to artists of all nationalities or ethnic groups.

A good number of foreign cultural centres have been established in the Grand Duchy, enabling individuals to maintain contact with the culture of their country of origin or to have access to culture in their mother tongue.

The Ministry of Culture provides financial and logistical assistance to these regional cultural centres.

2.6

Luxembourg is a State party to the European Convention on Human Rights signed at Rome on 4 November 1950 as well as other applicable international instruments in that area.

In accordance with the Luxembourg Constitution and other applicable laws, the competent criminal jurisdictions ensure the enforcement of these laws.

Given that the law in Luxembourg does not have special provisions applicable to terrorism separate from common criminal law, and that the judicial system does not include special tribunals, which, moreover, are formally prohibited by the Constitution, the current laws in Luxembourg are deemed adequate to ensure respect for the provisions of international instruments on human rights, humanitarian law and political asylum.